



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

June 28, 2005

REGISTERED MAIL

RB 336 144 296 US

Calyx Hoag
JNC Properties LLC
807 East 51st Street
Bellingham, Washington 98226

Dear Mr. Hoag:

RE: **Administrative Order No. 2533:** Administrative Order for **placement of fill in 0.08 acres of isolated wetlands** to develop single-family homes along with access roads and associated underground utilities off of Axton Road, City of Ferndale, Whatcom County, Washington.
Corps of Engineers Reference No. 200401390

The request for an administrative order for proposed work in isolated wetlands within the Deer Creek drainage basin for Phase I of the Pioneer Plaza residential development, City of Ferndale, Whatcom County has been reviewed. The State of Washington has determined that the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of Chapter 90.48 RCW and other appropriate requirements of State law. The Order does not authorize placement of fill in wetlands determined to be regulated by the Army Corps of Engineers.

This approval is subject to the conditions contained in the enclosed Order. If you have any questions, please contact Susan Meyer at 425-649-7168. Written comments can be sent to her at the Department of Ecology, Northwest Regional Office, 3190 160th Avenue SE, Bellevue, WA 98008 or sune461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Jeannie Summerhays
Section Manager
Shorelands and Environmental Assistance Program

JS:AK:cu

cc: Tom Black, City of Ferndale
Randel Perry, Corps of Engineers

Andrew Craig, Ecology/BFO
Bob Hayden



DEPARTMENT OF ECOLOGY

IN THE MATTER OF THE REQUEST BY)
CALYX HOAG, JNC PROPERTIES LLC)
FOR AN ADMINISTRATIVE ORDER TO) ORDER NO. 2533
CONDUCT WORK IN ISOLATED WETLANDS)

To: Calyx Hoag
JNC Properties LLC
807 East 51st Street
Bellingham, Washington 98226

This is an Administrative Order requiring Calyx Hoag, JNC properties LLC to comply with Chapter 90.48 RCW and the rules and regulations of the Department of Ecology (Ecology) by taking certain actions which are described below. RCW 90.48.120(1) authorizes Ecology to issue Administrative Orders requiring compliance whenever it determines that a person has violated or creates a substantial potential to violate any provision of Chapter 90.48 RCW. This Order does not authorize Calyx Hoag, JNC Properties LLC to place fill in wetlands that are under Army Corps of Engineers jurisdiction (Corps Reference No. 200401390).

On October 1, 2004, Calyx Hoag, JNC Properties, LLC submitted a request to fill small isolated wetlands to construct single family homes for Pioneer Meadows Phase I, on lots already cleared with utilities and access roads in place. The Jurisdictional Determination issued by the Corps of Engineers on March 31, 2005 indicated that there are three isolated wetlands on site (Wetlands C, F, and X), totaling 0.08 acres of isolated wetland fill necessary to complete the project.

In view of the foregoing and in accordance with RCW 90.48.120(1):

This Order issued to Calyx Hoag, JNC Properties LLC shall be subject to the following conditions:

1. Calyx Hoag, JNC Properties LLC shall construct and operate the project in a manner consistent with the project description contained in the Joint Aquatic Resources Permit Application (JARPA) and Wetland Mitigation Plan for Pioneer Meadows Phase 2, dated June 2, 2005 or as otherwise approved by Ecology.
2. Project mitigation shall be constructed and maintained as described in the Wetland Mitigation Plan for Pioneer Meadows Phase 2, dated June 2, 2005.
3. Calyx Hoag, JNC Properties LLC shall provide access to the project site and all mitigation sites upon request by Ecology.
4. The following additional conditions are required by this approval:
 - a) "As-Built" Report: An "as-built" report and drawing documenting the final design of the mitigation areas shall be prepared when site construction and all planting is completed. The "as-built" documents shall include the following:
 - Final site topography;
 - Photographs of the areas taken from permanent reference points;

- The installed planting scheme showing quantities, densities, sizes, and approximate locations of plants, as well as plant sources and the time of planting;
- Types of habitat features (e.g., snags, large woody debris) and their locations;
- Locations of permanent vegetation transects, sampling and monitoring sites; and,
- An analysis of any changes to the mitigation plan that occurred during construction.

A copy of the "as-built" report and drawing shall be sent to Ecology's Susan Meyer at the Northwest Regional Office, 3190 160th Avenue SE, Bellevue, Washington 98008 within 60 days of completing mitigation construction and planting, and in no case later than June 30, 2006.

5. Deed Restriction: Permanent protection of the wetland mitigation and preservation areas and buffers shall be recorded on the property deed. The deed shall clearly indicate that the wetland mitigation and preservation mitigation areas are "waters of the state". Documentation that this requirement has been fulfilled shall be provided to Ecology's Susan Meyer as part of the "as-built" report.
6. Monitoring and Contingency Plan: Monitoring shall be done as described in the Wetland Mitigation Plan for Pioneer Meadows Phase 2, dated June 2, 2005.
 - a) A written report describing the monitoring results will be submitted to the Department of Ecology for monitoring years 1, 2, 3, 5, 7, and 10 after completion of the mitigation installation.
 - b) Performance Standards: Mitigation efforts shall be monitored for compliance with the performance standards referenced on pages 32 and 33 of the Wetland Mitigation Plan for Pioneer Meadows Phase 2, and as shown on the Mitigation Plan drawing. If the results of monitoring show that the Mitigation Area does not satisfy the performance standards set forth in the Mitigation Plan, additional monitoring and mitigation may be required (e.g., replanting, soil amendments, selection of alternative species, revaluation of the Standard of Success, etc.). Any additional monitoring or mitigation measures are subject to review and approval by Ecology.
 - c) The wetland mitigation planting plan shall be field supervised and inspected by a qualified wetland specialist(s) during grading and planting operations, as well as after planting has been completed, to ensure proper installation.
 - d) The boundaries of the mitigation area and buffers shall be permanently marked with stakes at least every 50 feet. The marking shall include signage that clearly indicates that clearing vegetation, excavation, placement of fill, and fertilizer/pesticide applications are prohibited within mitigation areas.
7. Calyx Hoag, JNC Properties LLC shall provide notice to Ecology's Susan Meyer, Shorelands and Environmental Assistance Program at 425-649-7168 or e-mail sune461@ecy.wa.gov at least 3 days prior to the start of placing fill in wetlands or other waters of the state.

8. This Order does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
9. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and foremen, and state and local government inspectors.
10. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public interest.

Failure to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

Any person aggrieved by Order 2533 may obtain review thereof by appeal. Pursuant to ch. 43.21B RCW, a person can appeal this order to the Pollution Control Hearings Board within 30 days of the date of receipt of this Order. Any such appeal must be sent to the Washington Pollution Control Hearings Board, PO Box 40903, Olympia, WA 98504-0903. Concurrently, a copy of the appeal must be sent to the Department of Ecology, Shorelands and Environmental Assistance Program, Attn: Loree' Randall, PO Box 47600, Olympia, WA 98504-7600. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

DATED 6/28/05, 2005 at Bellevue, Washington.



Jeannie Summerhays
Section Manager
Shorelands and Environmental Assistance Program